

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 5/1/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEITH WATERS,	:	
	:	
Petitioner,	:	1:17-cv-8258-GHW
	:	
-against -	:	<u>ORDER</u>
	:	
SUPERINTENDENT LYNN LILLEY,	:	
	:	
Respondent.	:	
	:	
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GREGORY H. WOODS, United States District Judge:

On April 14, 2023, Magistrate Judge Robert Lehrburger issued a Report and Recommendation (“R&R”) recommending that the Court deny Petitioner’s 28 U.S.C. § 2554 habeas corpus petition in this case. Dkt. No. 28 at 1. In that R&R, Magistrate Judge Lehrburger determined that Petitioner’s challenge to the validity of his New York state-court convictions for two counts of criminal sale of a controlled substance in the first degree should be dismissed because (a) his public trial claim fails on the merits, (b) his confrontation clause and hearsay evidence claim is both procedurally barred and meritless, (c) his actual innocence claim is procedurally defaulted and meritless, and (d) his legal sufficiency of the evidence claim is meritless. *See id.* at 14, 24–25, 38, 43.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within fourteen days of receiving a copy of the report. *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). The Court reviews for clear error those parts of the report and recommendation to which no party has timely objected. 28 U.S.C. § 636(b)(1)(A); *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

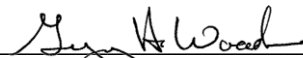
No objection to the R&R was submitted within the fourteen-day window. The Court has reviewed the R&R for clear error and finds none. *See Braunstein v. Barber*, No. 06 Civ. 5978 (CS) (GAY), 2009 WL 1542707, at *1 (S.D.N.Y. June 2, 2009) (explaining that a “district court may adopt those portions of a report and recommendation to which no objections have been made, as long as no clear error is apparent from the face of the record.”). The Court, therefore, accepts and adopts the R&R in its entirety. For the reasons articulated in the R&R, the petition is denied.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962). Petitioner has not made a substantial showing of the denial of a constitutional right, so the Court denies a certificate of appealability under 28 U.S.C. § 2253.

The Clerk of Court is directed to mail a copy of this order to Petitioner, to enter judgment for Respondent, and to close this case.

SO ORDERED.

Dated: May 1, 2023
New York, New York



GREGORY H. WOODS
United States District Judge